

SUMMARY ANALYSIS OF AMENDED BILL

Author: Horton Analyst: Deborah Barrett Bill Number: AB 1418
Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: January 4, 2006
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Compile Listing Of 250 Largest Tax Delinquencies & Make Public Record

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 12, 2005.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 12, 2005 STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would require the Franchise Tax Board (FTB) to make publicly available an annual list of the top 250 tax delinquencies.

SUMMARY OF AMENDMENTS

As proposed to be amended, the amendments deleted prior language related to withholding on payments for goods and services by state agencies and local governments and deleted language related to the assessment of additional penalties for the underpayment of tax.

The proposed amendments modify provisions requiring the Board of Equalization to make publicly available, on a quarterly basis, a quarterly list of the top 250 delinquent tax delinquencies, as defined, that are due and owing to the BOE. These provisions do not apply to FTB and are not discussed in this analysis.

The proposed amendments do not address implementation concerns identified by the department in the previous analysis of the April 12, 2005, amendments. Those concerns are restated here for convenience.

Board Position:	Department Director	Date
<input type="checkbox"/> S <input type="checkbox"/> NA <input type="checkbox"/> NP	John Pavalasky (for JBP)	12/30/05
<input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> NAR		
<input type="checkbox"/> N <input type="checkbox"/> OUA <input checked="" type="checkbox"/> PENDING		

POSITION

Pending.

THIS BILL

This bill would require FTB to compile and make publicly available an annual list of the 250 largest tax delinquencies exceeding \$100,000. Tax delinquency is defined as an amount owing the state that is based on a final determination of a Notice of Proposed Assessment (NPA) or a jeopardy assessment and has been recorded as a Notice of State Tax Lien in any county recorders office in the state. Tax delinquencies that are expressly excluded from the list would include the following:

- A delinquency that is under litigation in a court of law,
- A delinquency for which a taxpayer has filed a petition for redetermination,
- A delinquency for which payment arrangements have been agreed to by both the taxpayer and FTB, and the taxpayer is in compliance with the arrangement, or
- A delinquency under which the taxpayer has filed for bankruptcy protection.

Prior to posting a tax delinquency on a public list, FTB would be required to provide a preliminary notice to the person or persons liable for the tax by first-class mail, return receipt requested. If the person fails to make arrangements to satisfy the liability or remit the tax due within 30 days of receiving the preliminary notice, the tax delinquency would be included on the list.

The annual list would be required to contain the following:

- The following information on each delinquency:
 - The name and last known address of the person or persons liable for payment,
 - The amount of delinquency including any applicable interest or penalties,
 - The time for which payment has been delinquent, and
 - The type of tax that is delinquent.
- The telephone number and address of the FTB office to contact if a person believes placement of his or her name on the list is in error,
- The total number of persons that have appeared on the list that have satisfied their delinquencies, and
- The total dollar amounts paid that are attributable to the list.

FTB would be required to remove a taxpayer's name from the list within five days if any of the following occurs:

- The person liable for the tax delinquency contacts FTB and resolution of the delinquency is being arranged or has been arranged.
- FTB verifies that an active bankruptcy proceeding has been initiated that involves the tax delinquencies.
- A bankruptcy proceeding has been completed, and FTB verifies that there are no assets available to pay the delinquent amount or amounts.
- FTB determines that the tax delinquency is not collectable.

A debtor that partially satisfies a delinquency may request FTB to include the amount of payments made on the annual list of debtors.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- Requiring notification to the taxpayer prior to posting taxpayer information on the Web site by return receipt instead of first-class mail delivery may allow taxpayers to refuse to sign the return receipt, thereby never initiating the 30-day period during which the taxpayer must resolve their liability to avoid appearing on the list. The author may want to consider revising the language to begin the 30-day period on the date of mailing rather than the date of receipt, which is the standard for notification on tax issues for the department. Additionally, the post office does not provide return receipts "required" it does provide return receipts "requested" documentation.
- While the list is supposed to be made available annually, updating requirements would prevent this from being an annual list. The provisions that require recording payments from debtors and other updating to the list would require an accounting platform that is different from an annual list. As delinquencies on the list are resolved or removed, it is unclear whether the author intends that new qualifying delinquencies be added so that an ongoing list of the top delinquencies is provided. Additionally, the requirement that FTB post payments made for delinquencies on the list may conflict with the requirement that a taxpayer's name be removed upon resolution of the liability. The author may wish to specify which action should be taken under these circumstances.
- The bill would require the delinquencies on the list to be 1) the result of a board determination, and 2) be the subject of a state tax lien. There are significant tax delinquencies in FTB's collection inventories that are not the result of a board determination, such as:
 - self assessed delinquencies,
 - non-protested NPAs,
 - protested but not appealed NPAs, and
 - jeopardy assessments where the taxpayer did not file a petition for review.

The author may want to include all tax delinquencies that are the subject of a state tax lien to ensure the most egregious delinquencies are included in the list.

- Current state law found in the Government Code prohibits the home addresses of elected or appointed officials from being made public. If any of the top 250 delinquencies are also elected or appointed officials, this list would conflict with that prohibition. It is unclear whether the author intends to treat elected or appointed officials that may qualify to appear on the list differently from other taxpayers. Additionally, the department classifies elected and appointed officials at the state level through a manual review of election results and gubernatorial appointments. There is currently no automated process available to identify elected officials below the state level, which may lead to violations of the prohibition against making their home addresses public.

- Current IRS/FTB information sharing agreements prohibit the release of any federal tax information, which includes taxpayer addresses, received from the IRS without specific authorization. Unauthorized disclosure of federal tax information, including addresses, is a felony under federal law. The bill should be amended to exempt addresses obtained from the IRS from the posting requirement.
- The bill seeks to identify “the 250 largest tax delinquencies in excess of \$100,000.” This language is vague about whether the author intends tax delinquencies to be per taxpayer, which could be a dollar total of multiple years, or per taxpayer per year, which could place a taxpayer’s name on the list multiple times. Clarification is recommended to specify the author’s intent in this regard.
- The requirement that would remove a taxpayer from the list while the taxpayer is in contact with FTB to resolve a delinquency may permit a taxpayer to delay actually implementing a payment arrangement or other resolution. Since having one’s name removed from the list is the motivation for the taxpayer to resolve a delinquency, removing the name prior to actual resolution eliminates the incentive to complete a payment arrangement. The author may want to revise the language to require that actual arrangements be in place prior to removal of a name from the list.
- The bill would exclude a delinquency that is the subject of litigation or have had a petition for redetermination filed. If these delinquencies have had liens filed, they have passed the stage of appeal and are final assessments that are not eligible for additional hearings or actions, until paid. As written, the language could be construed as providing additional remedies to a taxpayer, thereby minimizing the finality of a Board or court decision. In addition, FTB does not make redeterminations of deficiency assessments available in the same way that BOE does. FTB proposed assessments have protests, appeals, and hearings on appeals, which are not applicable if the deficiency has progressed far enough to have a lien filed.

FISCAL IMPACT

The department anticipates that one-time programming and information technology resources would be needed to develop the delinquency list. Resources would be needed to extract the delinquency data from departmental systems, verify the accuracy of the information extracted to avoid inadvertent disclosure, automate the issuance of notices, and maintain a web site to make the list publicly available. Ongoing costs would be required to maintain and update the list as required and to provide notification to taxpayers as required. Department costs will be developed as the bill progresses through the legislative process; however, the costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

Based on a department study, the revenue gain from this bill is as follows:

Estimated Revenue Impact of AB 1418		
Assumed Effective Tax Years 1/1/2006		
Assumed Enactment Date After 6/30/05		
(Millions)		
2005/06	2006/07	2007/08
\$ 1.5	\$ 1.5	\$ 1.5

Revenue Discussion

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

According to an internal FTB study, the 250 largest taxpayer accounts owe approximately \$40 million. This study also projects that posting taxpayer's names would result in collections of 4% of this amount or approximately \$1.6 million in revenues. This projection takes into account the considerable collection remedies and automated system used by the state that other states with debtor websites do not have.

ARGUMENTS/POLICY CONCERNS

Embarrassing or angering taxpayers may undermine the current practice of self disclosure and assessment of a taxpayer's liability. In addition, listed taxpayers may act in a manner unintended.

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